

Notice of Allowability

Application No.

10/770,886

Examiner

David P. Stitzel, Esq.

Applicant(s)

SEMBO, SATOSHI

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to June 30, 2006.
2. ☒ The allowed claim(s) is/are 1-9.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

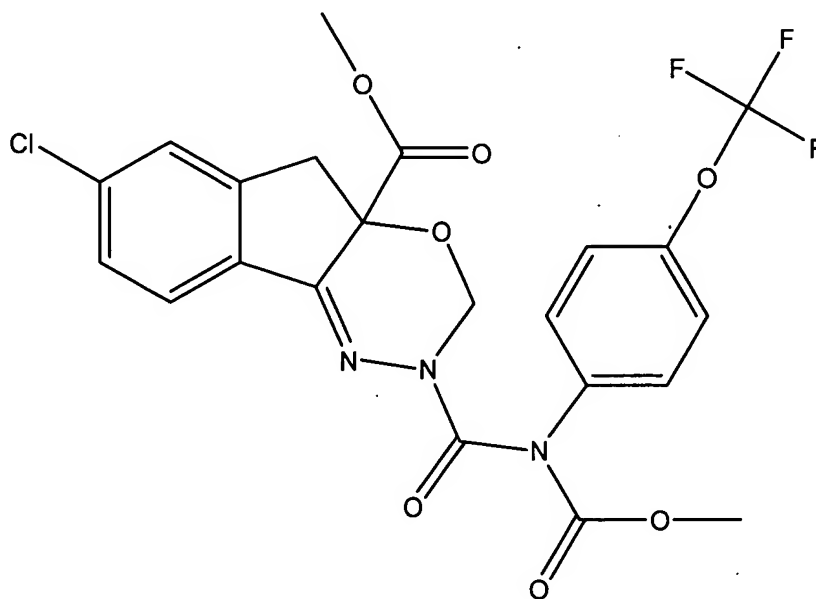
1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

OFFICIAL ACTION***Acknowledgment of Receipt***

Receipt of the Applicant's Response, which was filed on June 30, 2006, in response to the Official Action dated March 22, 2006, is acknowledged.

Examiner's Statement of Reasons for Allowance

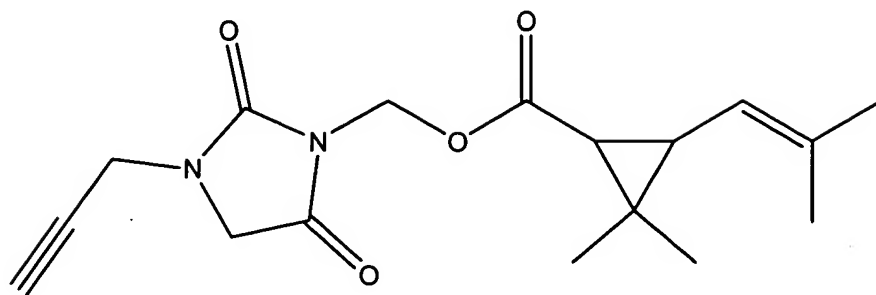
Claims 1-9 of the instant invention are drawn to a pesticidal composition and corresponding method for controlling pests comprising applying said pesticidal composition to said pests, wherein said pesticidal composition comprises: indoxacarb according to formula (A); and imiprothrin according to formula (B), as illustrated in greater detail hereinbelow:



oxadiazine compound of formula (A)

(a.k.a., indoxacarb)

(a.k.a., methyl (S)-7-chloro-2,3,4a,5-tetrahydro-2-[methoxycarbonyl](4-trifluoromethoxyphenyl)carbamoyl]indeno[1,2-e][1,3,4]oxadiazine-4a-carboxylate)



pyrethroid compound of formula (B)

(a.k.a., imiprothrin)

(a.k.a., (2,5-dioxo-3-(prop-2-ynyl)imidazolidin-1-yl)methyl
2,2-dimethyl-3-(2-methylprop-1-enyl)cyclopropanecarboxylate)

(a.k.a., [2,5-dioxo-3-(2-propynyl)-1-imidazolidinyl]methyl chrysanthemate)

(a.k.a., 1-propargyl-3,N-hydantoinylmethyl chrysanthemate)

wherein the ratio of said indoxacarb to said imiprothrin ranges from 50:1 to 1:10, and more specifically from 20:1 to 1:4; wherein said pests are selected from the group consisting of: cockroaches; houseflies; mosquitoes; termites; and ants.

U.S. Pre-Grant Patent Application Publication Number 2002/0115565 (hereinafter the Asrar '565 publication) teaches a method of controlling pests with an insecticidal composition comprising an oxadiazine derivative and a pyrethroid compound, namely imiprothrin; wherein the ratio of said oxadiazine derivative to imiprothrin is within the range of 1:1000 to 1000:1; wherein said pests include, without limitation, mosquitoes, flies and ants (abstract, [0018]-[0019], [0023]-[0025], [0030]-[0032], [0034]-[0036], [0047], [0053], [0073]-[0076], [0085] and claims 1-3, 5 and 6). However, the Asrar '175 publication does not explicitly teach "indoxacarb" as being the oxadiazine derivative within the insecticidal composition. More importantly however, the Asrar '175 publication teaches that the oxadiazine derivatives incorporated within

said insecticidal composition are preferably 1,3,5-oxadiazine derivatives ([0036]), as opposed to the 1,3,4-oxadiazine indoxacarb compound of formula (A) as instantly claimed.

U.S. Patent 6,218,416 (hereinafter the Sembo '416 patent) teaches a method of controlling agricultural pests with a pesticidal composition comprising: a guanidine derivative; and a pyrethroid compound, namely imiprothrin (a.k.a., [2,5-dioxo-3-(2-propynyl)-1-imidazolidinyl]methyl chrysanthemate); and optionally an additional pesticidal ingredient, such as an indoxacarb pest repellant; wherein said pests are of the phylum Arthropoda and are selected from the group consisting of mosquitoes, flies, termites, ants and cockroaches (abstract; column 1 in its entirety; column 4 in its entirety; column 6, lines 7-11 and 39-47; column 7, lines 19-32, 52-56 and 59-62; and column 8, lines 6-25). Although the Sembo '416 patent teaches that indoxacarb may be incorporated within said pesticidal composition, indoxacarb is present within an extensive list of additional pesticidal ingredients. Furthermore, although the Sembo '416 patent teaches that said additional pesticidal ingredients may be synergists within said pesticidal composition, the Sembo '416 patent fails to explicitly teach a pesticidal composition comprising the specific combination of indoxacarb and imiprothrin in a ratio as instantly claimed, which has been shown by the Applicant in the instant specification to exhibit unexpected synergistic results ([0050], Table 1).

In light of the foregoing discussion regarding the instant invention, the state of the prior art at the time the instant application was filed, and the unexpected synergistic results obtained with said pesticidal composition and corresponding method for controlling pests, the instantly claimed invention as a whole is deemed to be patentable over the prior art because the prior art fails to disclose, teach or suggest a pesticidal composition and corresponding method for

controlling pests comprising applying said pesticidal composition to said pests, wherein said pesticidal composition comprises: indoxacarb according to formula (A); and imiprothrin according to formula (B); wherein the ratio of said indoxacarb to said imiprothrin ranges from 50:1 to 1:10, and more specifically from 20:1 to 1:4; wherein said pests are selected from the group consisting of: cockroaches; houseflies; mosquitoes; termites; and ants.

Any comments considered necessary by Applicants must be submitted no later than the payment of the issue fee and should preferably accompany the issue fee, so as to avoid processing delays. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Contact Information

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to David P. Stitzel, M.S., Esq., whose telephone number is 571-272-8508. The Examiner can normally be reached on Monday-Friday, from 7:30AM-6:00PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Johann Richter, Ph.D., Esq., can be reached at 571-272-0646. The central fax number for the USPTO is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published patent applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished patent applications is only available through Private PAIR. For more information about the PAIR system, please see <http://pair-direct.uspto.gov>. Should you have questions about acquiring access to the Private PAIR system, please contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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